



**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**  
**Honorable Jennifer E. Niemann**  
**Hearing Date: Wednesday, July 5, 2023**  
**Department A – 510 19<sup>th</sup> Street**  
**Bakersfield, California**

***At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.***

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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2. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

1. [23-10723](#)-A-13      **IN RE: RAMONA TAPIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-14-2023    [\[50\]](#)

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Dropped as moot.

NO ORDER REQUIRED.

The court is granting the chapter 13 trustee's Motion to Dismiss [MHM-1] below, therefore this order to show cause will be dropped as moot.

2. [23-10723](#)-A-13      **IN RE: RAMONA TAPIA**  
[MHM-1](#)

MOTION TO DISMISS CASE  
6-7-2023    [\[42\]](#)

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Granted.

ORDER:                            The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the default of the debtor is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #42. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; and (2) provide Trustee with any requested documents. Doc. #42. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to

propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4).

Because the debtor failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

3. [23-10723](#)-A-13     **IN RE: RAMONA TAPIA**  
[RDW-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY DS HOUSING APH-01 LP  
5-24-2023     [\[36\]](#)

DS HOUSING APH-01 LP/MV  
REILLY WILKINSON/ATTY. FOR MV.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Overruled as moot.

ORDER:     The court will issue an order.

The court is granting the chapter 13 trustee's Motion to Dismiss [MHM-1] above, therefore this objection to confirmation of plan will be overruled as moot.

4. [23-10934](#)-A-13     **IN RE: DANIEL JONES**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION  
6-1-2023     [\[17\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
JONATHAN VAKNIN/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Sustained.

ORDER:     The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to

LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtor filed his chapter 13 plan ("Plan") on April 30, 2023. Doc. #3. Toyota Motor Credit Corporation ("Secured Creditor") objects to confirmation of the Plan on the grounds that the Plan fails to provide for the curing of Secured Creditor's claim of \$8,837.15 pursuant to 11 U.S.C. § 1322(b)(5). Doc. #17.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Secured Creditor filed its proof of claim on June 3, 2023. Claim 2.

Here, Section 3.08 of the Plan provides for Secured Creditor as a Class 2A claim with a secured claim amount of \$8,773.82 with an interest rate of 2.00%. Doc. #3. However, Secured Creditor's Proof of Claim provides a claim for \$8,837.15 at a fixed annual interest rate of 2.9%. Claim 2. The Plan fails to account for Creditor's claim. Claim 2; Doc. #3.

Accordingly, pending any opposition at the hearing, the objection will be SUSTAINED.

5. [23-10444](#)-A-13     **IN RE: ARMONDO COR-DOVA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
5-12-2023    [\[36\]](#)

MICHAEL MEYER/MV

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the default of the debtor is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #36. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) appear at the scheduled § 341 meeting of creditors; (2) provide Trustee with any requested documents; (3) make all payments due under the plan; and (4) file complete and accurate schedules and statements pursuant to 11 U.S.C § 521 and/or Federal Rule of Bankruptcy Procedure 1007. Debtor has filed inaccurate and/or incomplete schedules and thus, Trustee has not been able to determine liquidation in this case. Doc. #36. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors because the debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan.

Because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

6. [23-10445](#)-A-13      **IN RE: ROGELIO/MYRA RIOS**  
[RSW-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
5-25-2023    [\[19\]](#)

MYRA RIOS/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Granted.

ORDER:              The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987).

Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Rogelio Frausto Rios and Myra Rios (collectively, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital One Bank (USA), N.A. ("Creditor") on the residential real property commonly referred to as 13406 Night Stare Lane, Bakersfield, CA 93314 (the "Property"). Doc. #19; Schedule D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Here, Debtors filed the bankruptcy petition on March 9, 2023. Doc. #1. A judgment was entered against Rogelio Frausto Rios in the amount of \$3,346.09 in favor of Creditor on October 24, 2018. Ex. 4, Doc. #22. The abstract judgment was recorded pre-petition in Kern County on December 13, 2018, as document number 218163985. Ex. 4, Doc. #22. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #19. The Property also is encumbered by two mortgage liens, one in favor of Freedom Mortgage Corporation in the amount of \$333,091.29 and another in favor of the Secretary of Housing and Urban Development in the amount of \$72,662.29. Schedule D, Doc. #1. Debtors claimed an exemption of \$339,203.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$475,200.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$3,346.09
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$405,753.58
Amount of Debtors' claim of exemption in the Property	+	\$339,203.00
		\$748,302.67
Value of Debtors' interest in the Property absent liens	-	\$475,200.00
Amount Creditor's lien impairs Debtor's exemption		\$273,102.67

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
6-7-2023     [\[13\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Sustained.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Cheryl Meliza Zuzon Lopez ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on April 1, 2023. Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because: (1) Debtor will be unable to make all payments and comply with the Plan as required under 11 U.S.C. § 1325(a)(6); and (2) the Plan fails to provide for the full payment, in deferred cash payments, of all claims entitled to priority under § 507 of the Bankruptcy Code as required under 11 U.S.C. § 1322(a). Doc. #13.

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). In addition, section 1322(a) of the Bankruptcy Code states that a plan shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan. 11 U.S.C. § 1322(a). The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

Here, the Plan calls for monthly payments of \$5,000.00 for 60 months. Plan, Doc. #3. The Plan as proposed does not provide for payment of any priority claims. Id. Section 3.12 of the Plan estimates \$0 in priority claims to be paid. Id.

Trustee contends that the Plan fails to provide for the payment of priority claims as required under 11 U.S.C. § 1322(a), and the court agrees. Debtor scheduled her debt owed to the Internal Revenue Service (the "IRS") as "unknown", and the Plan provides for \$0 in priority claims. Schedule E/F, Doc. #1; Plan, Doc. #3. However, on May 10, 2023, the IRS filed an amended proof of claim asserting unsecured priority debt in the amount of \$132,857.75 and general unsecured debt in the amount of \$91,270.71, for an aggregate of \$224,128.46. Claim 3-3. On June 15, 2023, the IRS filed a further amended proof of claim, asserting unsecured priority debt in the amount of \$157,306.35 and general unsecured debt in the amount of \$94,199.71, for an aggregate of



\$251,506.06. Claim 3-4. Thus, Debtor's Plan does not provide for priority claims in the amount filed.

In addition, Trustee contends that if Trustee were to begin making payments without increasing the monthly Plan payment, the Plan would take 130.14 months to fund. Doc. #13. This is due in part to the failure of the Plan to account for the priority and general unsecured claims filed by the IRS. Id. To pay all secured, priority unsecured, general unsecured, and administrative claims as provided for in Debtor's chapter 13 plan over 60 months, the Plan payment would need to be increased to \$7,960.00 per month, starting in month 1. Id. The court notes that Trustee's calculation of the amounts to be paid under the Plan is based on the amended proof of claim filed by the IRS on May 10, 2023, and the IRS filed another amended proof of claim on June 15, 2023 that increased the amounts owed to the IRS, so the monthly Plan payments required to fund the Plan in 60 months likely would need to be increased to more than \$7,960.00 in order to pay all secured, administrative, priority and general unsecured claims in full as provided in the Plan.

The court finds that the Plan fails to fund in 60 months. Further, the Plan fails to provide for payment of priority claims as required under 11 U.S.C. § 1322(a).

Accordingly, pending any opposition at the hearing, the objection will be SUSTAINED.

8. [23-10796](#)-A-13      **IN RE: KARLA GARCIA**  
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
6-5-2023    [\[18\]](#)

MICHAEL MEYER/MV

FINAL RULING:                      This matter will proceed as scheduled.

DISPOSITION:                      Sustained.

ORDER:                                The court will issue an order.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the default of the debtor is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Michael H. Meyer ("Trustee"), the chapter 13 trustee in the bankruptcy case of Karla Garcia ("Debtor"), objects to Debtor's claim of a homestead exemption in Debtor's real property located at 2650 Cold Cred Avenue, Rosamond, California (the "Property") under California Code of Civil Procedure ("C.C.P.") § 704.730

in the amount of "100% of fair market value, up to any applicable statutory limit" because Debtor fails to list a specific dollar amount that Debtor is claiming exempt under either C.C.P. § 704.30(a)(1) or (a)(2). Doc. #18; Schedule C, Doc. #10. Debtor has not responded to Trustee's objection.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.730(a)] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

Because Debtor fails to list a specific dollar amount that she is claiming exempt in the Property under either C.C.P. § 704.30(a)(1) or (a)(2), Debtor has not met her burden of proof and Trustee's objection is SUSTAINED.

9. [23-11196](#)-A-13      **IN RE: JUAN SANDOVAL**

ORDER TO SHOW CAUSE AS TO WHY THIS CHAPTER 13 CASE SHOULD NOT BE DISMISSED  
6-15-2023    [\[11\]](#)  
DISMISSED 6/26/23

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Dropped as moot.

NO ORDER REQUIRED.

An order dismissing this case was entered on June 26, 2023. Doc. #17.  
Therefore, this order to show cause will be DROPPED AS MOOT.

10. [19-11598](#)-A-13      **IN RE: BRIAN/MARIA PATRICK**  
[DMG-3](#)

CONTINUED MOTION TO MODIFY PLAN  
4-28-2023    [\[61\]](#)

MARIA PATRICK/MV  
D. GARDNER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

1. [19-12084](#)-A-7     **IN RE: CRYSTAL HEARD**  
[DMG-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT  
6-7-2023    [\[41\]](#)

JEFFREY VETTER/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted if the moving party adequately supplements the  
record at the hearing.

ORDER:                        The minutes of the hearing will be the court's findings  
and conclusions. The Moving Party will submit a proposed  
order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Because the motion requires the moving party to supplement the record at the hearing to address a discrepancy in the costs of litigation found within the moving papers, a hearing on this motion is required. This matter will proceed as scheduled.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Crystal Ann Heard ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the resolution of the estate's interest in Debtor's claims for past wages and damages against Walmart, Inc. ("Walmart"), Debtor's former employer. Doc. #41.

Among the assets of the estate are the claims against Walmart arising from Debtor's employment at Walmart for over 23 years. Decl. of Trustee at ¶ 3, Doc. #43. Debtor and Walmart have agreed to settle the claim with a settlement amount of \$130,750.00. Tr.'s Decl. at ¶ 5, Doc. #43. After deducting costs, attorney's fees, and taxes, Debtor will receive \$30,648.45 and the estate will receive \$20,895.88. Id. at ¶¶ 5-6. The moving party submitted a motion, declarations, and exhibits containing differing values pertaining to costs of litigation, fees, taxes, and the estate's remaining balance. The motion reported costs of litigation at \$15,750.00, while Trustee's declaration reported costs at \$22,000.00. Doc. #41; Tr.'s Decl. at ¶ 5, Doc. #43. Exhibits filed in support of this motion show that final costs totaled \$22,127.45, but that two credit memos, one for \$6,250.00 and another for \$127.45, brought down the final balance due to \$15,750.00. Ex. A, Doc. #45. As a result, the motion and Trustee's declaration report different amounts of attorney's fees and Debtor's remaining balance, since both of those numbers depend upon the amount of costs of litigation, which are deducted before calculating the remaining amounts. Doc. #41; Tr.'s Decl. at ¶¶ 5-6, Doc. #43. Further, the motion reported the payroll tax at \$14,000.00 and deducted this amount from Debtor's remaining balance to calculate Debtor's net recovery to be \$55,000.00, while Trustee's declaration reported a payroll tax at \$13,705.67 and used this amount

to calculate Debtor's net recovery to be \$51,544.33. Doc. #41; Tr.'s Decl. at ¶ 5, Doc. #43. The agreement reports a payroll tax of \$14,000.00 but also reports Debtor's net recovery to be \$51,544.33. Ex. A, Doc. #45. This value is inconsistent with the agreement's other reported values. Finally, while both the motion and Trustee's declaration deduct \$30,648.45 from Debtor's net recovery to reflect Debtor's "wildcard" exemption, the differing amounts for Debtor's net recovery cause the two documents to report different amounts for the estate's recovery. Doc. #41; Tr.'s Decl. at ¶ 6, Doc. #43.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #41; Tr.'s Decl. at ¶ 8, Doc. #43. Trustee believes that locating witnesses, having witnesses testify in court, and incurring further litigation costs outweigh the risk of receiving a higher award amount at trial. Tr.'s Decl. at ¶ 8, Doc. #43. Although Trustee believes that the collection of damages would not be difficult, Trustee views the litigation to be difficult because it would involve the presentation of multiple witnesses, timelines, and documents at trial. Id. Trustee believes that the settlement serves the interests of creditors because it obtains a sum certain for the estate. Id. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. at ¶ 9. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the court is inclined to GRANT the motion if Trustee adequately clarifies for the court the differing amounts found within the moving papers.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

1. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
[DMG-9](#)

MOTION TO BORROW  
6-6-2023 [[260](#)]

FUTURE VALUE CONSTRUCTION, INC./MV  
D. GARDNER/ATTY. FOR DBT.  
RESPONSIVE PLEADING  
WITHDRAWN 6/28/23

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on June 28, 2023. Doc. #313.

2. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[FDA-1](#)

MOTION TO EMPLOY JOHN W. PHILLIPS AS SPECIAL COUNSEL  
5-31-2023 [[294](#)]

JATINDERJEET SIHOTA/MV  
LEONARD WELSH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, the certificate of service filed in connection with the notice of hearing (Doc. #299) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022)

instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

Ajitpal Singh and Jantinderjeet Kaur Sihota (together, "Debtors" or "DIP"), the chapter 12 debtors herein, move the court for an order authorizing the employment of John W. Phillips and Fennemore Dowling Aaron (collectively, the "Firm") as successor special litigation counsel ("Successor Special Litigation Counsel") to Debtors pursuant to 11 U.S.C. § 327(e) to perform the services previously authorized by this court. Doc. #294. Debtors seek authority to employ the Firm as Successor Special Litigation Counsel on an hourly basis. Id.

Section 1203 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires DIP to perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1203.

Section 327(e) of the Bankruptcy Code permits DIP to employ, with court approval, for a specified purpose, an attorney that has represented the debtor, "if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 327(e).

On December 15, 2020, this court authorized Debtors to employ Whitney Thompson & Jeffcoach ("WTJ") as special litigation counsel to assist in the defense of dischargeability litigation filed by a group of creditors who referred to themselves as the Toronto Group (the "Toronto Group") against Debtors. Order, Doc. #145. On June 28, 2021, John W. Phillips changed firms and is currently employed by Fennemore Dowling Aaron ("FDA"), whose address is 8080 N. Palm Avenue, Third Floor, Fresno, California. Decl. of Jantinderjeet Kaur Sihota, Doc. #295; Decl. of John W. Phillips, Doc. #296. On May 2, 2023, John W. Phillips filed a Substitution of Attorney, substituting FDA for WTJ. Doc. #288. John W. Phillips has represented Debtor for many years and is familiar with the litigation. Phillips Decl., Doc. #296.

The court finds that Successor Special Litigation Counsel is a disinterested person, outside of John W. Phillips' previous representation of Debtors, as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Sihota Decl., Doc. #295; Phillips Decl., Doc. #296. Debtors require Successor Special Litigation Counsel's services to defend Debtors in three separate adversary proceedings filed by Toronto Group in which Debtors are named as Defendants. Sihota Decl., Doc. #295.

Debtors request that Successor Special Litigation Counsel be employed on an hourly basis with reasonable compensation to be paid as allowed by the court after notice and hearing pursuant to 11 U.S.C. §§ 330 and 331. Doc. #294. Further, Successor Special Litigation Counsel is to be reimbursed for expenses it incurs in representing Debtors. Id. Most of the services provided to the estate will be performed by John W. Phillips, whose rate for purposes of this employment is \$525.00. Id.

Accordingly, this motion is GRANTED. The arrangement between Debtors and Successor Special Litigation Counsel is reasonable in this instance. Debtors shall submit a form of order specifically stating that employment of Successor Special Litigation Counsel has been approved pursuant to 11 U.S.C. § 327.

MOTION TO EMPLOY JOHN W. PHILLIPS AS SPECIAL COUNSEL  
5-31-2023    [\[552\]](#)

BALVINDER KAUR/MV  
LEONARD WELSH/ATTY. FOR DBT.

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Granted.

ORDER:              The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Bhajan Singh and Balvinder Kaur (together, "Debtors" or "DIP"), the chapter 12 debtors herein, move the court for an order authorizing the employment of John W. Phillips and Fennemore Dowling Aaron (collectively, the "Firm") as successor special litigation counsel ("Successor Special Litigation Counsel") to Debtors pursuant to 11 U.S.C. § 327(e) to perform the services previously authorized by this court. Doc. #552. Debtors seek authority to employ the Firm as Successor Special Litigation Counsel on an hourly basis. Id.

Section 1203 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1203. Section 327(e) of the Bankruptcy Code permits DIP to employ, with court approval, for a specified purpose, an attorney that has represented the debtor, "if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 327(e).

On December 15, 2020, this court authorized Debtors to employ Whitney Thompson & Jeffcoach ("WTJ") as special litigation counsel to assist in the defense of dischargeability litigation filed by a group of creditors who referred to themselves as the Toronto Group (the "Toronto Group") against Debtors. Order, Doc. #145. On June 28, 2021, John W. Phillips changed firms and is currently employed by Fennemore Dowling Aaron ("FDA"), whose address is 8080 N. Palm Avenue, Third Floor, Fresno, California. Decl. of Bhajan Singh, Doc. #553; Decl. of John W. Phillips, Doc. #554. On May 2, 2023, John W. Phillips filed a Substitution of Attorney, substituting FDA for WTJ. Doc. #288.

John W. Phillips has represented Debtor for many years and is familiar with the litigation. Phillips Decl., Doc. #554.

The court finds that Successor Special Litigation Counsel is a disinterested person, outside of John W. Phillips' previous representation of Debtors, as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Singh Decl., Doc. #553; Phillips Decl., Doc. #554. Debtors require Successor Special Litigation Counsel's services to defend Debtors in three separate adversary proceedings filed by Toronto Group in which Debtors are named as Defendants. Singh Decl., Doc. #533.

Debtors request that Successor Special Litigation Counsel be employed on an hourly basis with reasonable compensation to be paid as allowed by the court after notice and hearing pursuant to 11 U.S.C. §§ 330 and 331. Doc. #552. Further, Successor Special Litigation Counsel is to be reimbursed for expenses it incurs in representing Debtors. Id. Most of the services provided to the estate will be performed by John W. Phillips, whose rate for purposes of this employment is \$525.00. Id.

Accordingly, this motion is GRANTED. The arrangement between Debtors and Successor Special Litigation Counsel is reasonable in this instance. Debtors shall submit a form of order specifically stating that employment of Successor Special Litigation Counsel has been approved pursuant to 11 U.S.C. § 327.



1. [23-10464](#)-A-7     **IN RE: ALEXIS BARAJAS MARQUEZ**

PRO SE REAFFIRMATION AGREEMENT WITH WESTLAKE SERVICES, LLC  
6-6-2023    [[25](#)]

RHONDA WALKER/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Dropped.

ORDER:             The court will issue an order.

The debtor's counsel will inform the debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.